



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 24, 1995

Ms. Laura S. Portwood  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-084

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29085.

The City of Houston (the "city") received a request for various information relating to programs administered by its Housing and Community Development Department. You inform us that the city has released some of the requested information. The city seeks to withhold from required public disclosure portions of the requested information based on sections 552.101, 552.105, 552.107(1), and 552.111 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. You say this exception applies to portions of the information that you say are attorney work product.

Information within the privilege for attorney work product is not information deemed confidential by law. *See* Open Records Decision No. 575 (1990). Information is "privileged" only to the extent a court in a particular case decides it to be so. *See id.*

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<sup>1</sup>The city originally raised section 552.110 of the Government Code, but has since withdrawn that claim.

Thus, section 552.101 cannot be used to protect attorney work product information. *Id.* Consequently, the city may not withhold attorney work product information based on section 552.101 of the Government Code.<sup>2</sup>

You raise section 552.104 in your letter to this office; however, you did not mark any of the information you enclosed as within this exception. We, therefore, do not consider the applicability of section 552.104 to any of the requested information.

You raise section 552.105, which excepts from required public disclosure information relating to

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

This provision protects a governmental body's planning and negotiating position with regard to a particular transaction. *See* Open Records Decision No. 564 (1990). However, when a transaction is completed, the exception no longer applies. *See* Open Records Decision No. 310 (1982) at 2.

You have submitted two "representative samples" of information for which you raise this exception. One is an appraisal; the other is a list or part of a list of apartment projects, dated March 1993. We conclude that pursuant to section 552.105 of the Government Code the city may withhold the appraisal until the contract for the subject property is awarded and the list unless or until the city has publicly announced the projects on the list.<sup>3</sup>

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<sup>2</sup>An attorney's work product may be excepted from required public disclosure if the requirements of section 552.103(a) of the Government Code are met. You have not raised section 552.103(a).

<sup>3</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We consider next your section 552.107(1) claim. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5; 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5. Consequently, a governmental body may withhold only information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574. We have marked the portions of the requested information that the city may withhold based on section 552.107(1).

Finally, we address your claims under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We have marked the portions of the requested information that the city may withhold under section 552.111 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" and last name "Guajardo" clearly distinguishable.

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 29085

Enclosures: Marked documents

cc: Ms. Patricia Moore  
2800 Barton's Bluff Lane, # 2305  
Austin, Texas 78746  
(w/o enclosures)